IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

...

Criminal Appeal No.378-SB of 1996

Decided on : November 28, 2007

Joginder alias Toni

...Petitioner

versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

Present : Mr.Bipan Ghai, Advocate for the appellant.

Mr.K.S.Godara, Deputy Advocate General Haryana.

A.N.JINDAL, J. -

By way of present appeal, Joginder alias Toni (hereinafter referred to as the appellant) has challenged the judgment dated 14.5.2006, passed by Additional Sessions Judge, Bhiwani convicting him under Section 366-A of the Indian Penal Code (for short IPC) and sentencing him vide order dated 15.5.1996, to undergo rigorous imprisonment for five years and to pay fine of Rs.500/-, in default of payment of fine, to undergo further rigorous imprisonment for fifteen days.

In brief, the prosecution case is that on 26.2.1994, at about 11.00 a.m., the prosecutrix (name not being disclosed) had gone to Dadri to get medicines for cough, etc. When failed to find her, on 28.2.1994, her

father Raghbir Singh (complainant) made a statement Ex.PA to the police that the appellant had kidnapped the prosecutrix by inducing her, whereupon, FIR Ex.PW7/8 was registered. The appellant and the prosecutrix were apprehended and were medico-legally examined. Certificate of date of birth of the prosecutrix Ex.PW6/A was taken into possession. The prosecutrix in her statement Ex.DB recorded under Section 164 of the Code of Criminal Procedure (for short Cr.P.C.) by the Ilaqa Magistrate, stated that she had been induced by the appellant on the pretext of getting employment for her and that she was taken to Dadri, Rohtak, Karnal, Singhoi, Yamunanagar. She also alleged that the appellant used to do `Galat Vyayahar' with her.

The completion of the investigation was followed by the presentation of the report under Section 173 Cr.P.C. The appellant was accordingly charge-sheeted under Sections 363, 366 and 376 IPC, to which he pleaded not guilty and claimed trial.

During trial, the prosecution examined as many as 11 witnesses, namely; the prosecutrix (PW1), Raghbir Singh (PW2), Vijay Kumar Jain draftsman (PW3), Dr.Kamla Bhardwaj (PW4), Dr.N.C.Gauba (PW5), Hawa Singh (PW6), ASI Dharam Pal (PW7), ASI Mahender Singh (PW8), Head Constable Suresh Chand (PW9), Sub-Inspector Bhaj Raj (PW10) and Shri Baljeet Singh, Judicial Magistrate Ist Class (PW11).

The appellant denied all theincriminatingcircumstances appearing against him during his statement under Section 313 Cr.P.C. and pleaded his false implication in the case. Ultimately, the trial ended in conviction under Section 366-A IPC. Hence, this appeal.

At the very outset, without assailing the judgment of conviction, Mr.Bipan Ghai, the learned counsel appearing for the appellant has urged that from the facts and circumstances surrounding the case, the offence under Section 366 IPC is made out and not under Section 366-A IPC. Having deliberated over the issue, I accept the contention and convict the accused under Section 366 IPC, instead of of Section 366-A IPC.

It has been further urged by the counsel that some lenient view may be taken. Having deliberated over the matter, it may be observed that the appellant is the eldest son of his family and in the year 1996, he had been studying in 10+1 class. He might have settled in life by now and there are all chances of his coming to the main stream. Sword of domacles remained hanging over his head during the pendency of the trial and also the appeal, which has been pending since 1996. Lot of humiliation might have been suffered by him as also by his family. He has already undergone about seven months and five days of the substantive sentence. Though the longevity of the trial and pendency of the present appeal, may not be a cause to exonerate the appellant for such a grave offence, yet it could be taken as a mitigating circumstance for reduction of the sentence.

Consequently, the appeal is dismissed with the modification that the sentence of rigorous imprisonment is reduced to that already undergone by the appellant, without alteration in the fine.

(A.N.JINDAL)
JUDGE

The 28th day of November, 2007
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To be referred to Reporter : Yes / No